

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 30 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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RAJENDRASINH GAGUBHA JADEJA

Versus

INDRASINH AJITSINH

Appearance:

MR DILIP B RANA for Petitioner

MR SR DIVETIA, APP for Respondent No.1

MR BN DOCTOR, for Respondent Nos.2,3 and 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/08/98

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.P.P.S.R.Divetia on behalf of the respondent No.1 and learned advocate Mr.B.N.Doctor, on behalf of the respondent Nos. 2,3 and 4. By consent of the learned advocate appearing for the parties, this application is heard today.

2. The original complainant has filed this application under Section 439 (2) of the Code of Criminal Procedure, for cancellation of bail, granted in favour of the respondent Nos.2,3 and 4, by the learned Addl. Sessions Judge, Surendranagar, by his order dated 17-9-97, whereby the learned Addl. Sessions Judge, released the respondent Nos. 2,3 and 4, in connection with the C.R.No.I 149 of 1997 of Surendranagar City Police Station, for the offence punishable under Section 302, 304, 498 (A) and 114 of the IPC.

3. The daughter of complainant Jyotsnaba was married with the respondent No.2 Indrasinh Zala, prior to three

months of the date of the incident i.e. on 22-8-97. It is the allegation of the complainant that the deceased Jyotsnaba was treated with cruelty by her husband and members of his family. It is further alleged that the respondent Nos.2,3 and 4 and other co-accused by force had administered poison to the deceased Jyotsnaba. It is alleged that when the deceased Jyotsnaba was serious, the husband and his relatives did not accompany her to the hospital and the deceased was taken to the hospital by one Surubha and the complainant Rajendrasinh, who happens to be the brother of the deceased. On these allegations, the brother of the deceased namely Rajendrasinh Manubha Jadeja lodged first information report on 23-8-97 at 13-30 hours at the Surendranagar Police Station, against the respondent NOs. 2,3 and 4 and other family members. The learned Addl. Sessions Judge had released the other co-accused viz. mother in law and sister in law of the deceased which order is not challenged by the complainant in this application. The respondent Nos. 2,3 and 4 filed Misc. Criminal Application No.354/97, in the Court of Addl. Sessions Judge, Surendranagar, to release them on bail. The learned Addl. Sessions Judge after hearing the learned advocates of the respective parties and after perusing the police papers, released the respondent Nos. 2,3 and 4, by his order dated 17-9-97, which has been challenged by the petitioner in this application.

4. Learned counsel for the petitioner has vehemently submitted that the learned Judge has misread the evidence and had granted bail, and therefore, the order is arbitrary, and therefore, the bail granted in favour of the respondent Nos. 2,3 and 4 deserves to be cancelled.

5. In support of the aforesaid submissions, learned counsel for the petitioner has placed reliance on the decision State of Gujarat V. Lalji Popat & Ors. reported in 1988 (2) G.L.R.,1073 and State of Maharashtra v. Anand Chintaman Dighe, reported in A.I.R. 1991, S.C.,1603.

6. In my opinion, the ratio laid down by the Supreme Court in A.I.R. 1991, 1603, will not apply to the facts of the present case as in the case before the Supreme Court, there were serious allegations against the original accused under TADA Act. Therefore, in view of the facts of that case, the Supreme Court had cancelled the bail granted to the original accused.

7. The decision reported in (1988) (2) G.L.R.,1073. on which reliance is placed by the learned advocate for the petitioner is also not helpful to the petitioner. In

the above cited case, the Court had ignored the evidence produced by the Investigating Agency and the learned Sessions Judge has misread the evidence, and therefore, the High Court had cancelled the bail. In this case, there are two sets of evidence emerging from the police papers produced by the learned Public Prosecutor. In the first set of evidence, it has borne out that there was no cruelty meted out to the deceased Jyotsnaba. The earlier statement recorded during the investigation, prima facie, does not show that the deceased was treated with cruelty by the respondent Nos. 2,3 and 4 and other co-accused. When the deceased was firstly admitted in the hospital, she had not stated that she was forcibly given poison by the respondent Nos. 2,3 and 4 and other co-accused. The statement of Chandrikaben also does not reveal that the deceased was forcibly given poison by the respondent Nos. 2,3 and 4 and other co-accused. Although there is statements of the complainant and one Surubha which disclose that the deceased has made oral dying declaration wherein she had stated that she was treated with cruelty and respondent Nos. 2,3 and 4 and other co-accused had forcibly given her poison. When there are two sets of evidence, the discretion exercised by the learned Addl. Sessions Judge, cannot be said to be arbitrary or illelgal. Once the discretion is exercised in favour of the respondent Nos. 2,3 and 4, in my view, the bail granted to the respondent Nos.2,3 and 4 cannot be interfered with in this application for cancellation of bail.

8. The question which arises for consideration of this Court is whether the bail, which is granted to the respondent Nos 2,3 and 4 , require to be cancelled under Section 439 (2) of the Code. Learned advocate Mr.D.B.Rana for the petitioner has submitted that this is a fit case wherein the bail granted to the respondent No.2,3 and 4 should be cancelled.

9. On the other hand, it is submitted by learned advocate for the respondent Nos. 2,3 and 4 that a bail can be cancelled in rarest of rare cases where the person released on bail abuses liberty or commits any breach of conditions imposed while releasing him on bail. In support of his submission, learned advocate for the respondent Nos. 2,3 and 4 has relied upon the judgment of the Supreme Court in the case of Aslam Babalal Desai vs. State of Maharashtra, reported in AIR 1993 Supreme Court 1, wherein, the Supreme Court has set out grounds for cancellation of bail in paragraph 10 as under :

"As stated in Raghubir Singh's case (AIR 1987 SC

149) the grounds for cancellation under Sections 437(5) and 439 (2) are identical, namely, bail granted under Section 437 (1) or (2) or 439 (1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. There grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

10. The learned advocate for the respondent Nos.2,3 and 4 has further submitted that the principles on which a bail can be granted are different than the principles on which a bail can be cancelled. Cancellation of such bail is harsh order, because it interferes with the liberty of the individual and, hence, it must not be lightly resorted to.

11. Learned advocate for the respondent Nos.2,3 and 4 has relied upon the decision of the Supreme Court in the case of Dolatram vs. State of Haryana, reported in 1995 Supreme Court Cases (Cri)237, wherein, it is held as under :

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the

possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. "

12. Bearing in mind the above principles laid by the Supreme Court in the cases of Aslam Babalal Desai and Dolatram (Supra), in my opinion, the circumstances against the respondent Nos.2,3 and 4 are not such that the bail granted in their favour should be cancelled. The Investigating Officer has not pointed out that the respondent Nos.2,3 and 4 were having any antecedents or are having any criminal record. The Investigating Officer has not expressed any apprehension that, if the respondent Nos.2,3 and 4 are released on bail, they would abuse their liberty or would temper with the evidence of the prosecution or they would jump the bail. No prior antecedents or criminal record of the respondent Nos.2,3 and 4 have been brought on record during the hearing of the bail application. Therefore, looking to the facts and circumstances of the case, I do not deem it fit to cancel the bail granted in favour of the respondent Nos.2,3 and 4, bearing in mind the principles laid down by the Apex Court in the aforesaid decisions. Therefore, in my opinion, as per the principles laid down by the Supreme Court in the cases of Aslam Babalal Desai and Dolatram (Supra), and looking to the facts and circumstances of the case that the respondent Nos.2,3 and 4 are not having any antecedents or criminal record, the bail granted to the respondent Nos.2,3 and 4 by the learned Addl. Sessions Judge cannot be cancelled.

13. Before concluding this order, as the learned Addl. Sessions Judge did not impose any condition at the time of granting bail in favour of the respondent Nos. 2,3 and 4, in my view, in the facts and circumstances of the case, interest of justice would be served if the following conditions are imposed on the respondent Nos. 2,3 and 4, that they shall :

- (a) not take undue advantage of their liberty or abuse their liberty
- (b) not act in a manner injurious to the interest of the prosecution ;
- (c) maintain law and order ;
- (d) mark their presence at the Surendranagar City

Police Station on 1st and 15th day of every month
between 10-00 a.m. and 1-00 p.m. till the
commencement of the trial ;

- (e) furnish the address of their residence and shall
not change the residence without prior permission
of this Court till the trial is over ;
- (f) not leave the territory of Gujarat State without
prior permission of the Sessions Court,
Surendranagar or Investigating Officer till the
commencement of the trial ;
- (g) surrender their Passport, if any, to the lower
Court within a week ;

14. If breach of any of the above conditions is
committed, the Sessions Judge at Surendranagar will be
free to issue warrant or take appropriate action in the
matter.

15. Subject to the aforesaid directions, this
application stands disposed of accordingly. Rule
discharged.

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